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Attorneys for Sonos, Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

GOOGLE LLC,

Plaintiff,

vs.

SONOS, INC.,

Defendant.

Case No. 3:20-cv-06754 WHA
Related to Case No. 4:21-07559

**JOINT MOTION FOR ISSUANCE OF
LETTER OF REQUEST FOR
INTERNATIONAL JUDICIAL
ASSISTANCE AND APPOINTMENT OF
COMMISSIONERS TO TAKE
EVIDENCE PURSUANT TO CHAPTER
II, ARTICLE 17 OF THE HAGUE
CONVENTION OF 18 MARCH 1970 ON
THE TAKING OF EVIDENCE ABROAD
IN CIVIL OR COMMERCIAL MATTERS**

Referral: Hon. Donna M. Ryu, USMJ

1 April 21, 2022

2 Submitted via ECF

3 Hon. Donna M. Ryu, USMJ
4 Oakland Courthouse, Courtroom 4
5 1301 Clay Street, 3rd Floor
6 Oakland, CA 94612

6 Re: Joint Submission for Issuance of Letter of Request for International Judicial
7 Assistance
8 *Google LLC v. Sonos, Inc.*, Case No. 4:20-cv-06754-WHA (N.D. Cal.)
9 *Sonos, Inc. v. Google LLC.*, Case No. 4:21-cv-07559-WHA (N.D. Cal.)

9 Your Honor:

10 The parties in the above-referenced actions seek the Court's assistance in order to take
11 deposition testimony from witness Janos Levai in Switzerland. Mr. Levai, a Software Engineer at
12 Google LLC, is a witness who will offer testimony relevant to this action. The parties have agreed
13 to conduct a remote live video deposition of Mr. Levai in Switzerland, but the parties must first meet
14 certain foreign discovery conditions pursuant to the Hague Convention.

14 Switzerland, as a party to the Hague Convention, requires litigants to obtain permission from
15 the Federal Office of Justice before taking deposition testimony of a witness located in Switzerland.
16 To obtain such permission, the parties must have a United States District Court (1) appoint a Swiss
17 commissioner and appoint representatives for the parties who will participate in the deposition as
18 commissioners, and (2) request judicial assistance from the applicable Swiss authorities.

18 To that end, we write to request that the Court grant the parties' Joint Motion for Issuance
19 of Letter of Request for International Judicial Assistance and Appointment Of Commissioners to
20 Take Evidence Pursuant to Chapter II, Article 17 of The Hague Convention of 18 March 1970 on
21 the Taking of Evidence Abroad in Civil or Commercial Matters. The parties have agreed that Olivier
22 Buff, a Swiss attorney representing the Google LLC, will be appointed Swiss Commissioner. The
23 parties have also agreed that Nima Hefazi and Lindsay Cooper will be appointed commissioners for
24 Google, and Dan Smith, Michael Boyea, and Jae Pak will be appointed commissioner for Sonos,
25 Inc.

23 Thank you for Your Honor's kind attention to this matter.
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1 Sonos, Inc. (“Sonos”) and Google LLC (“Google”) hereby move the Court pursuant to
 2 Fed. R. Civ. P. 28(b) for entry of an order (the “Order”):

- 3 (1) Appointing Nima Hefazi and Lindsay Cooper on behalf of Google and Dan Smith,
 4 Michael Boyea, and Jae Pak on behalf of Sonos, as commissioners (together, the
 5 “Commissioners”), pending the approval of the Swiss authorities, to conduct the
 6 examination of witness Janos Levai in Switzerland pursuant to Chapter II, Article 17 of
 7 the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or
 8 Commercial Matters, T.I.A.S. No. 7444, 23 U.S.T. 2555 (“Chapter II of the Hague
 9 Convention”);
- 10 (2) Appointing Olivier Buff as commissioner (the “Swiss Commissioner”), pending the
 11 approval of the Swiss authorities, to supervise the examination of witness Janos Levai in
 12 Switzerland pursuant to Chapter II of the Hague Convention;
- 13 (3) Issuing a Letter of Request for International Judicial Assistance (“Letter of Request”)
 14 pursuant to 28 U.S.C. § 1781 and Chapter II of the Hague Convention;
- 15 (4) Directing submission of the Letter of Request for Assistance to the Swiss Federal Office
 16 of Justice (“FOJ”) via the Cantonal Court of Zürich for the purpose of approving the
 17 appointment of the Commissioner; and
- 18 (5) Granting such other and further relief as this Court may deem just and proper.

19 The parties have agreed to use the procedures of Chapter II of the Hague Convention to
 20 facilitate the deposition of Janos Levai in Switzerland, who has consented to being deposed there
 21 via remote means. Under Chapter II, a deposition is supervised by a Swiss Commissioner and
 22 conducted by commissioners representing the parties and duly appointed by the Court in the U.S.
 23 proceeding, all of whom are authorized to proceed by the FOJ at the request of the U.S. tribunal.
 24 This procedure will not restrict the scope of discovery otherwise permissible under the Federal Rules
 25 of Civil Procedure.

26 The steps to proceed under Chapter II of the Hague Convention are as follows:
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- 1 1. The Court must duly appoint one or several commissioner(s) for the purpose of taking
2 evidence abroad. A proposed order for the Court to appoint commissioners is attached hereto
3 as Exhibit A (the “Proposed Order”).
- 4 2. The Court must issue a Letter of Request to the FOJ for authorization to take evidence
5 abroad. A proposed Letter of Request is attached hereto as Exhibit B (the “Proposed Letter
6 of Request”).
- 7 3. The necessary application for authorization (the “Swiss Application”), with the Proposed
8 Order and the Proposed Letter of Request attached to it, must be filed with the FOJ via the
9 Central Authority in the canton where the evidence is to be taken, *i.e.*, the High Court of the
10 Canton of Zurich, International Judicial Assistance, Hirschengraben 13/15, 8021 Zurich 1,
11 Switzerland.¹ Google will undertake this step if the Court grants the instant motion.
- 12 4. Upon approval from the FOJ and subject to the terms contained in the Proposed Letter of
13 Request and/or the Swiss Application, the parties will arrange for a live video deposition.
14 Olivier Buff will be present in person at the deposition of Mr. Janos Levai to supervise
15 proceedings.
- 16 5. The deposition will take place at the Swiss offices of Quinn Emanuel at Dufourstrasse 29,
17 8008 Zürich, Switzerland or another nearby office if additional space is required. Mr. Janos
18 Levai has agreed to voluntarily comply by proceeding pursuant to Chapter II of the Hague
19 Convention.
- 20 6. Neither the entry of the Proposed Order, the Proposed Letter of Request, the submission of
21 the Swiss Application nor the conduct of the deposition pursuant to Chapter II of the Hague
22 Convention shall constitute or operate as a waiver of the attorney-client privilege, the work
23 product doctrine, or any other privileges, rights, protections, or objections that may apply to
24 that evidence under the laws of Switzerland, or of the United States, nor as a concession that
25 any assertion of any such privilege, right, protection, or objection is necessarily valid.

27 ¹ The application is sent to the competent Central Authority, *i.e.*, the High Court of the Canton
28 of Zurich, International Judicial Assistance, Hirschengraben 13/15, 8021 Zurich 1, Switzerland.
After examining the Request, the Central Authority will forward the application to the FOJ.

1
2 Dated: April 21, 2022

Respectfully submitted,

3 /s/ Sean Sullivan

/s/ Charles K. Verhoeven

4 Sean Sullivan
5 Attorneys for SONOS, INC.

Charles K. Verhoeven
Attorneys for GOOGLE LLC

6 LEE SULLIVAN SHEA SMITH LLP

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

ATTESTATION OF CONCURRENCE

I am the ECF user whose ID and password are being used to file this Joint Motion for Issuance of Letter of Request for International Judicial Assistance and Appointment of Commissioners to Take Evidence Pursuant to Chapter II, Article 17 of The Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters. Pursuant to Civil L.R. 5-1(i)(3), I hereby attest that each of the signatories identified above has concurred in the filing of this document

Dated: April 21, 2022

By /s/ Charles K. Verhoeven
Charles K. Verhoeven
Counsel on behalf of Google